



ALTERNATIVE DISPUTE RESOLUTION (ADR) THE BRIDGE FROM LITIGATION TO DISPUTE RESOLUTION

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SUMMARY

- **What is ADR**
- **Why Use ADR**
- **What is required by DLAD 5145.1**
- **Why the preference for mediation**
- **How to make it work**

What Is ADR?

Definition: Any procedure agreed to by the parties to resolve disputes using a *third party neutral*

Types: Mediation, facilitation, arbitration, conciliation, fact-finding, use of ombuds, early neutral evaluation, mini-trials, or any combination

Why Do ADR?

It saves money: saves time, money, resources

It makes sense: helps focus on both parties' interests;
builds better relationships

It advances DLA strategic goals:

- #1: Supporting Our Customers
- #2: The Revolution in Business Affairs
- #3: Enabling Our Workforce
- #5: Partnering with Industry

Why Do ADR? (continued)

It's DLA policy

- DLAD 5145.1: Encourages the expanded use of ADR. If unassisted negotiations do not resolve an “issue in controversy,” ADR *must* be considered and a management decision not to use ADR *must* be explained *in writing* by an official at least one level above the deciding official, after consultation with counsel.

FAR Requirements

Protests: FAR 33.103 (c)

Disputes: FAR 33.201, 33.204, 33.210, 33.214,

- » Agencies encouraged to use ADR
- » Contracting officers are authorized to use ADR
- » Contracting officer who refuses contractor request for ADR must inform contractor, in writing, of reasons
- » Contractor who refuses Government request for ADR must inform contracting officer in writing, of reasons (see also 33.214(b))

ADR Works!

- GAO protests mediated at DSCR
- Contract appeal settled at DSCC
- Contract claim mediated at DSCP

The ADR “Mindset”

ADR is always a “win.” “Winning” means getting what you want. ADR helps focus on *what both parties want*. ADR is also valuable even if parties can’t resolve disagreement (focus/narrow issues; improve relationships).

ADR is “interest based.” Traditional dispute resolution is on the *position* or the *issue*. ADR is about *interests*. Is it in our interest to keep insisting we are legally right (even if we are) if we alienate contractors/employees and spend lots of money answering letters, complaints to OSD/Congress/ the Director?

What is Mediation?

Definition: Mediation is a process where parties meet with a third party neutral (the mediator) in a nonadversarial setting to seek resolution of the dispute. The mediator helps the parties craft their own solutions to the problem. If successful, mediation results in a written agreement resolving the dispute.

Preference for Mediation: DLAD 5145.1 gives special emphasis to mediation in selecting ADR, because of its particular benefits.

Mediation Benefits

- Parties typically save money, resources, time
- Parties retain control of the result
- Parties have more options than in other forums
- Parties can preserve business relationships/reduce likelihood of further disputes
- Parties can address the real issues in dispute
- Parties work directly with each other
- Parties may avoid unfavorable judicial/administrative precedent
- Mediation has good success rates; even if unsuccessful, parties retain existing rights.

You Can Resolve Disputes without a Third Party, But...

Trust Problems: party sees DLA as the “opponent;” does not believe DLA position (“reactive devaluation”)

Reality Testing: mediator/neutral can evaluate the case; temper unrealistic positions.

Problem-Solving: neutral can help explore options that the parties could not identify themselves.

Builds partnerships: provides a forum for better listening and problem-solving; shows DLA cares enough to give a hearing with a third party.

HOW TO MAKE IT WORK

- **Consider ADR for resolving every contract dispute**
- **Contact the Office of Counsel (x7179) for assistance in determining if your dispute should be addressed by ADR**